

## HOUSE BILL NO. 2092

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Willett)

A BILL to amend and reenact §§ 19.2-389, as it is currently effective and as it shall become effective, 37.2-416, and 37.2-506 of the Code of Virginia, relating to Department of Behavioral Health and Developmental Services; background checks; persons providing contractual services.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-389, as it is currently effective and as it shall become effective, 37.2-416, and 37.2-506 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-389. (Effective until July 1, 2021) Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and

detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

53           7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.)  
54 of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered  
55 a position of employment whenever, in the interest of public welfare or safety and as authorized in the  
56 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
57 with a conviction record would be compatible with the nature of the employment under consideration;

58           8. Public or private agencies when authorized or required by federal or state law or interstate  
59 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult  
60 members of that individual's household, with whom the agency is considering placing a child or from  
61 whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary,  
62 or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall  
63 not be further disseminated to any party other than a federal or state authority or court as may be required  
64 to comply with an express requirement of law;

65           9. To the extent permitted by federal law or regulation, public service companies as defined in §  
66 56-1, for the conduct of investigations of applicants for employment when such employment involves  
67 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
68 with the nature of the employment under consideration;

69           10. The appropriate authority for purposes of granting citizenship and for purposes of international  
70 travel, including, but not limited to, issuing visas and passports;

71           11. A person requesting a copy of his own criminal history record information as defined in § 9.1-  
72 101 at his cost, except that criminal history record information shall be supplied at no charge to a person  
73 who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii)  
74 a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent  
75 Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual  
76 who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line  
77 program as defined in § 15.2-1713.1;

78           12. Administrators and board presidents of and applicants for licensure or registration as a child  
79 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'

representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

106 19. The Commissioner of Behavioral Health and Developmental Services for those individuals  
107 who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
108 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

109 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
110 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
111 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

112 21. Residential facilities for juveniles regulated or operated by the Department of Social Services,  
113 the Department of Education, or the Department of Behavioral Health and Developmental Services for  
114 the purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
115 services;

116 22. The Department of Behavioral Health and Developmental Services and facilities operated by  
117 the Department for the purpose of determining an individual's fitness for employment pursuant to  
118 departmental instructions;

119 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
120 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
121 records information on behalf of such governing boards or administrators pursuant to a written agreement  
122 with the Department of State Police;

123 24. Public institutions of higher education and nonprofit private institutions of higher education  
124 for the purpose of screening individuals who are offered or accept employment;

125 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-  
126 79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution  
127 of higher education, for the purpose of assessing or intervening with an individual whose behavior may  
128 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
129 history record information obtained pursuant to this section or otherwise use any record of an individual  
130 beyond the purpose that such disclosure was made to the threat assessment team;

131 26. Executive directors of community services boards or the personnel director serving the  
132 community services board for the purpose of determining an individual's fitness for employment, approval

as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the community services board to serve in a direct care position on behalf of the community services board pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the behavioral health authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider ~~or~~, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. ~~The chairmen~~ Chairman of the ~~Committees for Courts of Justice of the Senate~~ Committee on the Judiciary or the House of Delegates Committee for Courts of Justice for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the

187 Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of  
188 Financial Institutions or his designee may disclose such information to the applicant or its designee;

189 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
190 individuals for initial licensure pursuant to § 54.1-2106.1;

191 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
192 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and  
193 for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§  
194 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

195 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

196 42. The State Treasurer for the purpose of determining whether a person receiving compensation  
197 for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

198 43. The Department of Social Services and directors of local departments of social services for the  
199 purpose of screening individuals seeking to enter into a contract with the Department of Social Services  
200 or a local department of social services for the provision of child care services for which child care subsidy  
201 payments may be provided;

202 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members  
203 of a juvenile's household when completing a predispositional or postdispositional report required by §  
204 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

205 45. The State Corporation Commission, for the purpose of screening applicants for insurance  
206 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

207 46. Other entities as otherwise provided by law.

208 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
209 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
210 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
211 designated in the order on whom a report has been made under the provisions of this chapter.

212 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn  
213 to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the



214 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
215 copy of conviction data covering the person named in the request to the person making the request;  
216 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
217 making of such request. A person receiving a copy of his own conviction data may utilize or further  
218 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data  
219 subject, the person making the request shall be furnished at his cost a certification to that effect.

220 B. Use of criminal history record information disseminated to noncriminal justice agencies under  
221 this section shall be limited to the purposes for which it was given and may not be disseminated further.

222 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
223 history record information for employment or licensing inquiries except as provided by law.

224 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
225 Exchange prior to dissemination of any criminal history record information on offenses required to be  
226 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
227 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where  
228 time is of the essence and the normal response time of the Exchange would exceed the necessary time  
229 period. A criminal justice agency to whom a request has been made for the dissemination of criminal  
230 history record information that is required to be reported to the Central Criminal Records Exchange may  
231 direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of  
232 information regarding offenses not required to be reported to the Exchange shall be made by the criminal  
233 justice agency maintaining the record as required by § 15.2-1722.

234 E. Criminal history information provided to licensed nursing homes, hospitals and to home care  
235 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange  
236 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

237 F. Criminal history information provided to licensed assisted living facilities and licensed adult  
238 day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange  
239 for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 19.2-389. (Effective July 1, 2021) Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and

267 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for  
268 the purposes of the administration of criminal justice;

269 2. Such other individuals and agencies that require criminal history record information to  
270 implement a state or federal statute or executive order of the President of the United States or Governor  
271 that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon  
272 such conduct, except that information concerning the arrest of an individual may not be disseminated to a  
273 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest  
274 and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

275 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to  
276 provide services required for the administration of criminal justice pursuant to that agreement which shall  
277 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
278 security and confidentiality of the data;

279 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
280 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
281 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
282 security of the data;

283 5. Agencies of state or federal government that are authorized by state or federal statute or  
284 executive order of the President of the United States or Governor to conduct investigations determining  
285 employment suitability or eligibility for security clearances allowing access to classified information;

286 6. Individuals and agencies where authorized by court order or court rule;

287 7. Agencies of any political subdivision of the Commonwealth, public transportation companies  
288 owned, operated or controlled by any political subdivision, and any public service corporation that  
289 operates a public transit system owned by a local government for the conduct of investigations of  
290 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is  
291 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a  
292 conviction record would be compatible with the nature of the employment, permit, or license under  
293 consideration;

294 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.)  
295 of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered  
296 a position of employment whenever, in the interest of public welfare or safety and as authorized in the  
297 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
298 with a conviction record would be compatible with the nature of the employment under consideration;

299 8. Public or private agencies when authorized or required by federal or state law or interstate  
300 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult  
301 members of that individual's household, with whom the agency is considering placing a child or from  
302 whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary,  
303 or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall  
304 not be further disseminated to any party other than a federal or state authority or court as may be required  
305 to comply with an express requirement of law;

306 9. To the extent permitted by federal law or regulation, public service companies as defined in §  
307 56-1, for the conduct of investigations of applicants for employment when such employment involves  
308 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
309 with the nature of the employment under consideration;

310 10. The appropriate authority for purposes of granting citizenship and for purposes of international  
311 travel, including, but not limited to, issuing visas and passports;

312 11. A person requesting a copy of his own criminal history record information as defined in § 9.1-  
313 101 at his cost, except that criminal history record information shall be supplied at no charge to a person  
314 who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii)  
315 a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent  
316 Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual  
317 who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line  
318 program as defined in § 15.2-1713.1;

319 12. Administrators and board presidents of and applicants for licensure or registration as a child  
320 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'

321 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
322 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing  
323 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall  
324 not be further disseminated by the facility or agency to any party other than the data subject, the  
325 Commissioner of Social Services' representative or a federal or state authority or court as may be required  
326 to comply with an express requirement of law for such further dissemination;

327 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
328 offered or who accept public school employment and those current school board employees for whom a  
329 report of arrest has been made pursuant to § 19.2-83.1;

330 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
331 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and  
332 the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in  
333 Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

334 15. Licensed nursing homes, hospitals and home care organizations for the conduct of  
335 investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-  
336 126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-  
337 162.9:1, subject to the limitations set out in subsection E;

338 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of  
339 investigations of applicants for compensated employment in licensed assisted living facilities and licensed  
340 adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

341 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set  
342 forth in § 4.1-103.1;

343 18. The State Board of Elections and authorized officers and employees thereof and general  
344 registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with  
345 respect to voter registration, limited to any record of felony convictions;

346 19. The Commissioner of Behavioral Health and Developmental Services for those individuals  
347 who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
348 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

349 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
350 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
351 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

352 21. Residential facilities for juveniles regulated or operated by the Department of Social Services,  
353 the Department of Education, or the Department of Behavioral Health and Developmental Services for  
354 the purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
355 services;

356 22. The Department of Behavioral Health and Developmental Services and facilities operated by  
357 the Department for the purpose of determining an individual's fitness for employment pursuant to  
358 departmental instructions;

359 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
360 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
361 records information on behalf of such governing boards or administrators pursuant to a written agreement  
362 with the Department of State Police;

363 24. Public institutions of higher education and nonprofit private institutions of higher education  
364 for the purpose of screening individuals who are offered or accept employment;

365 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-  
366 79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution  
367 of higher education, for the purpose of assessing or intervening with an individual whose behavior may  
368 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
369 history record information obtained pursuant to this section or otherwise use any record of an individual  
370 beyond the purpose that such disclosure was made to the threat assessment team;

371 26. Executive directors of community services boards or the personnel director serving the  
372 community services board for the purpose of determining an individual's fitness for employment, approval

as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the community services board to serve in a direct care position on behalf of the community services board pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the behavioral health authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider ~~or~~, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. ~~The chairmen~~ Chairman of the ~~Committees for Courts of Justice of the Senate~~ Committee on the Judiciary or the House of ~~Delegates~~ Committee for Courts of Justice for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on



427 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of  
428 Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the  
429 applicant or its designee;

430 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
431 individuals for initial licensure pursuant to § 54.1-2106.1;

432 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
433 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and  
434 for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§  
435 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

436 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

437 42. The State Treasurer for the purpose of determining whether a person receiving compensation  
438 for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

439 43. The Department of Education or its agents or designees for the purpose of screening individuals  
440 seeking to enter into a contract with the Department of Education or its agents or designees for the  
441 provision of child care services for which child care subsidy payments may be provided;

442 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members  
443 of a juvenile's household when completing a predispositional or postdispositional report required by §  
444 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

445 45. The State Corporation Commission, for the purpose of screening applicants for insurance  
446 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

447 46. Administrators and board presidents of and applicants for licensure or registration as a child  
448 day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the  
449 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of  
450 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034  
451 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the  
452 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's

representative, or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination; and

47. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of

information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

#### **§ 37.2-416. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

507 "Hire for compensated employment" does not include (i) a promotion from one adult substance  
508 abuse or adult mental health treatment position to another such position within the same licensee licensed  
509 pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment  
510 position in another office or program licensed pursuant to this article if the person employed prior to July  
511 1, 1999, in a licensed program had no convictions in the five years prior to the application date for  
512 employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult  
513 substance abuse treatment position to any mental health or developmental services direct care position  
514 within the same licensee licensed pursuant to this article or (b) new employment in any mental health or  
515 developmental services direct care position in another office or program of the same licensee licensed  
516 pursuant to this article for which the person has previously worked in an adult substance abuse treatment  
517 position.

518 "Shared living" means an arrangement in which the Commonwealth's program of medical  
519 assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing  
520 with and providing companionship, support, and other limited, basic assistance to a person with  
521 developmental disabilities receiving medical assistance services in accordance with a waiver for whom he  
522 has no legal responsibility.

523 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts  
524 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service  
525 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service  
526 provider, (iv) any person employed by a sponsored residential service provider to provide services in the  
527 home, ~~and~~ (v) any person who enters into a shared living arrangement with a person receiving medical  
528 assistance services pursuant to a waiver, and (vi) any person under contract with the provider to serve in  
529 a direct care position to submit to fingerprinting and provide personal descriptive information to be  
530 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)  
531 for the purpose of obtaining national criminal history record information regarding the applicant. Except  
532 as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall:

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) if such applicant continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;~~or~~

3. Permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living arrangement or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;or

4. Allow any person under contract with the provider to serve in a direct care position who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed

pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse treatment facilities a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the

laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, ~~or~~ (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care position on behalf of the provider or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which

sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

K. Any person employed by a temporary agency that has entered into a contract with the provider and who will serve in a direct care position on behalf of the provider licensed pursuant to this article shall undergo a background check that shall include:



1. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider if that person has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

**§ 37.2-506. Background checks required.**

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

668 "Shared living" means an arrangement in which the Commonwealth's program of medical  
669 assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing  
670 with and providing companionship, support, and other limited, basic assistance to a person with  
671 developmental disabilities receiving medical assistance services in accordance with a waiver for whom he  
672 has no legal responsibility.

673 B. Every community services board shall require (i) any applicant who accepts employment in any  
674 direct care position with the community services board, (ii) any applicant for approval as a sponsored  
675 residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored  
676 residential service provider, (iv) any person employed by a sponsored residential service provider to  
677 provide services in the home, ~~and~~ (v) any person who enters into a shared living arrangement with a person  
678 receiving medical assistance services pursuant to a waiver, and (vi) any person under contract to serve in  
679 a direct care position on behalf of the community services board to submit to fingerprinting and provide  
680 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the  
681 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record  
682 information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community  
683 services board shall hire for compensated employment, approve as a sponsored residential service  
684 provider, ~~or~~ permit to enter into a shared living arrangement with a person receiving medical assistance  
685 services pursuant to a waiver, or permit any person under contract to serve in a direct care position on  
686 behalf of the community services board persons who have been convicted of (a) any offense set forth in  
687 clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in  
688 clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application  
689 date for employment, the application date to be a sponsored residential service provider, or entering into  
690 a shared living arrangement or (2) if such person continues on probation or parole or has failed to pay  
691 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-  
692 392.02.

693 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that  
694 no record exists, shall submit a report to the requesting executive director or personnel director of the

community services board. If any applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282 or 18.2-346; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a

felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, ~~or~~ (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense

while employed in a direct care position. A community services board may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, ~~or~~ permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract to serve in a direct care position on behalf of the community services board, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

I. Notwithstanding any other provision of law, a community services board that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

J. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

775 K. Any person employed by a temporary agency that has entered into a contract with a community  
776 services board and who will serve in a direct care position on behalf of the community services board shall  
777 undergo a background check that shall include:

778 1. A criminal history records check through the Central Criminal Records Exchange pursuant to §  
779 19.2-389; and

780 2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint  
781 of child abuse and neglect.

782 Except as otherwise provided in subsection C, D, or F, no community services board shall permit  
783 any person employed by a temporary agency that has entered into a contract with the community services  
784 board to provide direct care services on behalf of the community services board if that person has been  
785 convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-  
786 392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in  
787 the five years prior to the application date for employment, the application date to be a sponsored  
788 residential service provider, or entering into a shared living arrangement or (b) if such person continues  
789 on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of  
790 the definition of barrier crime in § 19.2-392.02.

791 #